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11/12/2014

November 11, 2014

Via ECF

Hon. Denise L. Cote,  
United States District Judge,  
Daniel Patrick Moynihan United States Courthouse,  
500 Pearl Street, Room 1610,  
New York, New York 10007-1312.

**MEMO ENDORSED**

Re: FHFA v. Nomura Holding America Inc., et al., No. 11-cv-6201

Dear Judge Cote:

We write on behalf of all defendants in response to plaintiff's letter of last evening seeking permission to file a 90-page brief in support of its summary judgment motion concerning due diligence. Plaintiff failed even to inform defendants that it would seek leave to file a 90-page brief until yesterday afternoon. And, of course, plaintiff failed to ask the Court for leave to file a lengthy brief until yesterday, although it obviously had planned to do so for some time. In addition, plaintiff served with its brief a 38-page declaration from a previously undisclosed expert, Charles Cipione of Alix Partners LLP, who purports to have "construct[ed] databases based on" documents produced in this case and to provide evidence supporting plaintiff's summary judgment motion based on those databases. (Declaration of Charles Cipione ¶ 9, November 10, 2014.) We do not believe at this point that all supporting material for that report has been provided to defendants.

As the Court will recall, the parties previously disagreed about plaintiff's right to move for summary judgment at this late date, and also about the briefing schedule (which imposes substantial burdens on defendants' counsel and their staff over the Thanksgiving holiday). As it stands, defendants must respond to the motion for summary judgment by noon on Tuesday, December 2. Plaintiff's 90-page proposed brief (on top of Mr. Cipione's declaration and a 300-page Rule 56.1 statement citing 532 exhibits) exacerbates these burdens. At the very least, defendants require additional time to depose Mr. Cipione, to examine his work, and to respond to his submission. The Court should

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(a) deny plaintiff's request to file a 90-page brief and require plaintiff to submit a brief of no more than 60 pages no later than November 14, and (b) grant defendants additional time, until December 23, to respond.

Respectfully submitted,

/s/ David B. Tulchin

David B. Tulchin

cc: Counsel of Record

*Denise L. Cote  
Nov. 12, 2014*